

**Approved 1/6/10**

**TOWN OF CUSHING  
PLANNING BOARD  
December 2, 2009**

**Board Present:** Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, and CEO Scott Bickford

**Absent:** None

**1.Call to Order:** Chairman Remian called the meeting to order at 6:15 P.M. and a roll call was taken.

**2. Minutes for Approval: 10/7/09 and 11/4/09**

Mrs. Kalloch noted two minor changes to the October minutes.

**ACTION:** Mr. Cobey made a motion, seconded by Mr. Muddle, that the minutes for October and November be accepted as written, with the modifications mentioned.  
Carried 5-0-0

The Board returned to the minutes after the communications discussion. Mrs. Kalloch said the public hearing held before the November meeting should have minutes. The regular PB meeting had started at 6:30 P.M.

**ACTION:** Mr. Cobey made a motion, seconded by Mrs. Kalloch, that we approve the minutes of the October meeting as modified and approve the minutes of the November meeting as modified.  
Carried 4-0-1 (Mr. Muddle abstained)

**3. Communications:** Mr. Remian said he had just received a copy of a letter to Andrew Hedrich from Deborah Dugan-Donovan of the West Knoll Conservation Trust [WKCT]. Mr. Hedrich said, in response to a question from the chairman, that no action would be required on the letter. The Board took a few minutes to read the letter. Thomas Dugan, a grantor of WKCT, explained to the Board the location of the sites mentioned in the letter, saying all three of the accesses from Pleasant Point Road converged at one point on the WKCT property. From that point, it proceeded up the middle of the lot and then meandered to the Robbins lot and then back to the WKCT lot. He said it was roughly 3000' from Pleasant Point Rd. to the end of Woodland Rd., which all three lot owners had used. Woodland Rd. ended at the mudflats and 50' back was a constant spring, surrounded by rocks. Mr. Dugan said Indian Springs was the key point where Cliff Path (a hard-packed ancient path) intersected with another path and allowed circumvention of the mudflats. He said this path had been used by WKCT to access its island property for over 25 years. Twenty-five feet behind Indian Springs there was another path, which was the continuation of Cliff Path, which WKCT had used to access Miller Island. Mr. Dugan said hikers and birdwatchers used these paths. He said the Porcupines and Wittleboro(?) Island were both critical to WKCT for its children's program and there were no plans for structures, except a maintenance shed on Miller Island.

**4. Preliminary Application Presented by Andrew Hedrich for Subdivision Revision, Affecting Maps 5 & 6, Lots 9, 10, and 26:** Paul Rudd of Machias Savings Bank said there were a number of issues concerning the end of the road in Meduncook Plantation Subdivision. Questions concerned whether it was a road or driveway, how many lots it accessed, and what were the standards. Also, there was some question of whether Lot 10 could be built upon. Mr. Rudd said there was also the question of whether the HOA or individual lot owner would be responsible for maintaining the access. He said there had been a question about Patrick Cardone's line and the future plans for the Sisters Wilderness lot, which could be accessed only by this corridor. In addition, he did not argue that there was considerable impact on the RP area.

Mr. Rudd said they had come up with a solution, now before the Board, that considered all of those issues. The end of the road and beginning of the driveway had been defined. The driveway would access only one lot. Sisters Wilderness Trust lot would merge into the old Lot 26 and there would be no additional impact to the RP zone. The bank had felt nothing else should be changed, though it had agreed with Mr. Cardone's line. Mr. Rudd said Carlton Johnson and surveyor Drew Grenier were present and all would be willing to answer questions. The way the

turnaround was drawn on the approved plan made no sense because it was located over a cliff, so they had moved it back. Mr. Rudd said Mr. Hedrich would explain another slight revision to the plan.

Mr. Hedrich of Gartley & Dorsky said he was seeking preliminary approval of the Meduncook Plantation subdivision revision. Referring to the packet provided, he said he had used the application and checklist for the current ordinances. Mr. Hedrich said Lots 9, 10, and 26 had been combined into two lots. Since there had been concern at the last meeting about the 2-to-1 side slopes, he had generated some cross sections across the roadway, which he now gave to the Board. Mr. Hedrich said this showed that the contours were greater than 2-to-1. Mr. Remian said he had looked at the side slopes and had observed 45% to 75% slopes. Mr. Hedrich responded that looking at the actual site was not an accurate way to measure side slopes. Mr. Remian said the Gartley & Dorsky RP survey done for the PB had 45-degree slopes. Mr. Hedrich said he had not measured the slope, but had rather generated the cross sections so he could see the full picture. Mr. Remian said he had calculated his figures with the town's inclinometer(?).

Mr. Cobey said he was concerned about how Mr. Hedrich had generated the length of the driveway because Cushing's Subdivision Regulations said the steepest allowable grade was 10%, but Ocean Ridge Rd. had been extended at least 50' beyond the point where it had 10% slope and was not a subdivision road at that point. He felt the driveway measurements should begin where it ceased to be a maximum of 10%, which was where he felt the ROW stopped. Adding 50' had made the driveway well over 500'. On the curve coming into the property there were slopes of 14% & 15%, which Mr. Cobey considered to be unsafe without substantial protections. Mr. Cobey would like to see those issues resolved before the PB took any formal action on the application. Additionally, he said there was plenty of evidence in the record that this was to be a 16' wide driveway and the 8/29/08 DEP approval called for it to be located in a 30' ROW, which was to be expanded to include the side slopes. Furthermore, Mr. Cobey said the PB minutes of 5/2/07 reported that Mr. Tower had committed to a stone barrier on the steep side of the driveway; he characterized this commitment as having been influential in bringing about the vote for approval that night.

Mr. Cobey noted there was no turnaround on Mr. Hedrich's plan and said a variance would have to be obtained if the driveway exceeded 500'. He was concerned about the lack of protection on the steep side if the driveway, which had no shoulders, because some of the drops were 30' as the curve was rounded. Mr. Cobey said he was concerned that the Board was getting into review without defined information. He added that it would be helpful to have the RP area delineated by Gartley & Dorsky outlined on the plan because the ROW was an easement through RP. It would also be important to hear from the HOA as to how the maintenance of the driveway would be resolved.

Mr. Remian asked about a conservation easement that was depicted on the drawing. Mr. Hedrich said that was a condition pointed out at the last meeting, but he did not have precise information about it because it had been changed many times. Mr. Remian said there was a registered copy of the correct drawing at the Registry of Deeds. Mr. Hedrich said the conservation easement had never been recorded and what he was showing on his drawing was what would be proposed to the DEP. Mr. Remian said the approved drawing had shown the conservation easement as 4.77 acres, as approved by the PB. After talking with the DEP, Mr. Hedrich had decided to do a minor revision to the plan, identifying the conservation easement to be resubmitted to the DEP. Mr. Cobey asked why the easement could not be identical to the RP area. Mr. Rudd said he had no objection and Mr. Hedrich agreed that could be discussed with the DEP. CEO Bickford said a conservation easement could be more strenuous since RP could be intruded upon with PB approval. Mr. Dugan said the large engineering diagrams, which WKCT did not have, lacked detail and did not match plans he had. He detailed the discrepancies and WKCT's concerns about access.

Mr. Cobey said he had reviewed earlier minutes and found many references to a 16' driveway, 30' easement, and 12% slopes; these were what the PB was looking for. He said side slopes were a separate issue for the DEP. Mr. Rudd(?) said the easement issue would go away now that the driveway would access only 1 lot. Mr. Cobey agreed. Mr. Hedrich had seen the 16' width and 12% slope mentioned in the ordinance many times; however, he said the final approved plan exempted width and grade for the road. Mr. Cobey said the 16' and 12% were agreed upon many times and in all other respects the driveway was to match the ordinance regulations for roads. There was further discussion of roadway vs. driveway. Mr. Cobey said there was no question on the part of the Board that this was intended to be a driveway. Mr. Hedrich asked the Board to provide him with the driveway requirements so it could be designed correctly, thus eliminating the confusion. Mr. Ellis said the exemption of width and grade meant that they would be driveway specs, with the rest to roadway specs; the Board agreed. Mr. Hedrich said there were no specs for driveways in the subdivision ordinance and Mr. Cobey said the intent was clear throughout the

minutes that it be 16' and 12% slope, though now that it accessed only one lot he felt it could be 12' wide. Mr. Hedrich said the driveway was now 15' wide and the PB said it was not asking that it be any wider than it now was. Mr. Cobey said the only width issue now was whether a fire truck could turn around at the bottom.

Chairman Remian agreed with Mr. Cobey that a site visit to see the driveway was necessary. He told Mr. Hedrich that the driveway as built did not meet the specifications agreed upon with Mr. Tower because there was 80% more fill than specified. Mr. Remian added that the driveway in place was over 500' long and Mr. Hedrick agreed. Mr. Hedrick said the bank would ask for a waiver to allow the driveway to be approximately 600' long. Mr. Cobey and Mr. Hedrich discussed slope, making reference to drawings. Mr. Cobey said the roadway needed to become the driveway at the point where it became steeper than 10% and the engineer agreed.

Mr. Ellis asked whether the approval of a driveway length over 500' was still in force since the road was never built and it seemed the Board's obligation to the applicant was to consider the new plan and whether or not it passed the standards now in place. He asked what consideration the Board should give to the DEP's approval of the RP intrusion. Mr. Cobey said the 500' driveway had never been approved and the PB did not have the power to approve an exemption of length. Mr. Ellis concluded that the old approval was history and the current application would have to satisfy current standards. Carlton Johnson(?) suggested that actions taken by Mr. Tower subsequent to the Board's signing of the plan "constituted substantial reliance that there was an approval." Mr. Remian said the Board also relied on what Mr. Tower and Mr. Johnson had told it concerning the sale of Lot 10. Mr. Johnson stated that he had made one factual representation, but that he suspected there had been non-factual representations made by someone else at subsequent meetings.

Mr. Ellis asked if the Board thought the DEP approval of intrusion into RP superseded the town's regulations. Mr. Cobey said the bank would have to satisfy both the town's and the DEP's requirements. Mr. Hedrich said DEP could take up to 6 months to respond, so the bank would initially concern itself with satisfying the town's requirements. He said the DEP's Colin Clark had told him Mr. Tower's consent agreement was now null and void and Mr. Tower was reluctant to sign a new one, but this should not affect a new owner.

Mr. Ellis said the Board needed to determine completeness and detail in writing any deficiencies of the submittals within 30 days. The Board clarified for Mr. Hedrich that the amended 2007 Subdivision Regulations would be in effect for the application. The CEO said the PB was looking at two separate things: 1) the driveway land use through RP and 2) an amended plan that would show a driveway that served only one lot. Mr. Cobey said both the length and width of the driveway must be noted on the drawing, as well as the turnaround at the foot of the driveway. There was a brief discussion of drainage along the road/driveway. The Board asked that drainage spreaders and riprap be shown on the plan.

Mr. Ellis said the PB would review the SZ permit and Subdivision Regulations simultaneously, which would require submittals under the SZ, including depiction of the RP delineation. This would require both applications to be submitted at the same time, since review would involve both. There was discussion of exactly what paperwork would need to be submitted.

Mr. Dugan said the Board had taken the concerns of WKCT into consideration and they would not have any more questions. Mr. Rudd said the bank was in the process of deeding the road, common areas and the "big piece" to the HOA. The chairman asked each Board member to do his own site walk.

**5. Old Business:** Mr. Ellis had missed the workshop discussion about coordinating with the Ordinance Committee and changing the bylaws. The language he had wanted regarding recommendations of other boards' work had not been included in the results and Mr. Ellis said he didn't know the consensus of the workshop. Mr. Remian said all Boards would submit a recommendation. Mr. Cobey said he would write it up and circulate it.

**6. New Business:** Mr. Cobey said the people on Raccoon Rd. had torn up a lot of wetlands of special significance within the 250' setback from the pond when they cleared their lot and he thought there should be a response to that violation. He said there was a separate common area that ran down to the pond at that point, part of which was a wetland. CEO Bickford said the map did not show any wetlands delineated there. Mr. Cobey said he thought the entire lot was a wetland and said there was standing water throughout it. The CEO said it was on a slope and he hadn't seen wetlands there and the septic was where it was designed to be. Mr. Cobey said there was a one-quarter acre of cattails within the lot. CEO Bickford responded that this was an approved lot in a subdivision and there was a building envelope at some time. He asked for some documentation of the wetlands Mr. Cobey said had

been disturbed. Mr. Cobey said the owners were not building in a wetland, but rather had cleared it within 250'. Mr. Bickford said the IF&W had not identified it as significant. Mr. Cobey responded that it was under NRPA, not SZ, and the CEO lacked intelligence if he couldn't see a wetland where cat-o'-nine-tails were growing. The CEO responded in kind.

Mr. Cobey said this would be a good time to discuss taking before and after photographs. The Board agreed this was a good idea and, though it had been discussed, it had not been included in the Subdivision Regulations. The chairman asked Mr. Cobey to draft some language for consideration.

**7. Adjournment:**

**ACTION:** Mr. Ellis made a motion to adjourn at 8:23 P.M.  
Carried 5-0-0

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Respectfully submitted,

Deborah E. Sealey  
Recording Secretary  
(Transcribed from the digital recording)